Hovsepian v. Apple, Inc. Doc. 100 Att. 2

EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: ACACIA MEDIA TECHNOLOGIES CORPORATION PATENT LITIGATION.	) C-05-01114-JW
	) SEPTEMBER 9, 2005
	) VOLUME 2
	) PAGES 217-428

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

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HONOR.

I THINK THAT'S ALL I HAVE ON TRANSMISSION SYSTEM.

THE COURT: DID YOU HAVE ANOTHER TERM?

MR. BLOCK: I DO.

THE COURT: ALL RIGHT.

MR. BLOCK: LAST TERM, TRANSCEIVER.

THE DIRECT T.V. DEFENDANTS WANT YOU TO CONSTRUE TRANSCEIVER TO BE LIMITED TO A SINGLE COMMUNICATION MEDIUM FOR BOTH TRANSMISSION AND RECEIVING.

AND THEIR SUPPORT FOR THIS NEW CONSTRUCTION COMES FROM THEIR EXPERT AND WE CONTEND THAT, THAT THIS CONSTRUCTION WHICH COMES FROM AN, AN EXPERT, AND THIS IS DR. LIPPMAN WHO WASN'T HERE TODAY, IT COULD CONTRADICT THE PLAIN MEANING AND THE EMBODIMENTS DISCLOSED IN THE PATENT, AND THUS IT WOULD BE CONTRADICTING IT.

THE FEDERAL CIRCUIT TELLS US IN VITRONICS THAT THE COURT SHOULDN'T CONSIDER EXPERT TESTIMONY THAT WOULD CONTRADICT CLEAR CLAIM MEANINGS AND EMBODIMENTS IN THE PATENTS.

LET ME TURN TO SHOW YOU FIGURE 6, YOUR HONOR.

AND WE HAVE THE TRANSCEIVER IN FIGURE 6

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WHICH WE KNOW RECEIVES INFORMATION AND TRANSMITS INFORMATION AND, AND NEXT TO THE ARROW IT SAYS THAT THE DIFFERENT PLACES WHERE INFORMATION COULD BE RECEIVED FROM, AND ONE OF THOSE IS SATELLITE.

FIGURE 2B, PLEASE.

2B SHOWS US THAT AT LEAST IN ONE EMBODIMENT, AT LEAST IN ONE EMBODIMENT THE TRANSMISSION SYSTEM INCLUDES A TRANSMITTER THAT CAN TRANSMIT OVER A SATELLITE.

NOW, THE PATENT DESCRIBES AN EMBODIMENT WHICH FULLY READS ON WHAT DIRECT T.V. DOES IN TERMS OF HOW RECEPTION FROM A SATELLITE OCCURS AND HOW COMMUNICATION FROM THE RECEPTION SYSTEM WOULD BE SENT BACK TO THE TRANSMISSION SYSTEM.

AND THAT'S REQUIRED TO ACKNOWLEDGE THAT MATERIALS WERE RECEIVED AND TO BILL THE SUBSCRIBER FOR THE MATERIAL THAT THEY RECEIVED.

AND THE PATENT TELLS US IN COLUMN 16, LINE 34, IT DESCRIBES THIS EMBODIMENT.

WHAT IT SAYS IS THAT WHEN ITEM DISTRIBUTION OCCURS THROUGH A BROADCASTING METHOD, SUCH AS A COMMUNICATIONS SATELLITE, THE PROCESS IS ONE WAY WITH ONGOING RECEPTION NOT BEING CONFIRMED BY THE RECEPTION SYSTEM 200.

IN THESE SITUATIONS SOME FURTHER

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REDUNDANCY IS INCLUDED BY TRANSMISSION FORMATTER 122 WITH THE DATA BLOCKS FOR ERROR CORRECTION PROCESS BEING PERFORMED IN THE RECEPTOR SYSTEM.

NOW IT TELLS US HOW IT'S GOING TO OCCUR IN SUCH ONE-WAY COMMUNICATIONS SITUATIONS. "THE QUEUE MANAGER PROGRAM RUNNING IN LIBRARY SYSTEM CONTROL COMPUTER CONFIRMS RECEPTION VIA TELEPHONE LINE CONNECTION, FOR EXAMPLE, TO THE RECEPTION SYSTEM AFTER DISTRIBUTION. THIS SHOULD OCCUR PRIOR TO UPDATING THE USER'S ACCOUNT AND THE DISPATCH LISTS."

IT'S SIMILAR TO THE WAY THAT FIGURE 2B COULD BE COMBINED WITH FIGURE 6. WE SHOW WHAT IS BEING COMBINED.

SO THE RED LINE SHOWS THE SATELLITE TRANSMISSION COMING FROM THE TRANSMITTER SYSTEM AND BEING RECEIVED BY THE TRANSCEIVER OF THE RECEIVING SYSTEM, AND THE COMMUNICATION THAT IS GOING BACK TO THE TRANSMISSION SYSTEM OCCURS ON THE BLUE LINE FROM THE TRANSCEIVER TO THE TELEPHONE LINE.

HOW DO WE KNOW THAT THIS TRANSMISSION OCCURS, THAT THE TRANSMISSION TO THE TRANSMISSION SYSTEM IS BEING PERFORMED BY THE TRANSCEIVER? THE PAGE I READ TO YOU DOESN'T USE THE WORD TRANSCEIVER.

WELL, WE HAVE THE BENEFIT OF DR. LIPPMAN'S DECLARATION, 28. HE TELLS US THAT HE UNDERSTOOD THE PATENT TO REQUIRE THAT THIS TRANSMISSION OCCURS IN THE TRANSCEIVER.

IT SAYS FURTHER, WITH RESPECT TO THE TWO-WAY COMMUNICATION PROCESS, HE'S SPEAKING NOW ABOUT, ABOUT THE ISDN EXAMPLE WHERE THERE'S A TWO-WAY PROCESS, BECAUSE THE TRANSCEIVER 201 ILLUSTRATED IN FIGURE 6 AND DESCRIBED AT 17:22 TO 25 IS DISCLOSED AS PART OF THE RECEPTION SYSTEM 200 THAT RECEIVES THE DATA FROM THE TRANSMISSION SYSTEM.

ONE SKILLED IN THE ART WOULD UNDERSTAND THAT THE TRANSCEIVER OF THE RECEPTION SYSTEM TRANSMITS THE CONFIRMATION OF THE RECEPTION BACK TO THE TRANSMISSION SYSTEM.

THE COURT: WHY WOULD THIS BE LIMITED? WHY WOULD THIS BE LIMITED TO THE ONE-WAY SITUATION?

MR. BLOCK: WHAT I'M DESCRIBING IS ONE EMBODIMENT.

THE COURT: IT WOULDN'T NECESSARILY. IN OTHER WORDS --

MR. BLOCK: YOU'RE RIGHT. IT WOULDN'T BE LIMITED IN THE TWO-WAY EMBODIMENT. THE TRANSMISSION BACK COULD GO OVER A DIFFERENT LINE.

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THE COURT: RIGHT. AND THEN IT ALSO MEANS THAT THE COMMUNICATION COULD COME IN IN ONE MEDIUM AND GO OTHER IN ANOTHER?

MR. BLOCK: THAT'S CORRECT.

THE COURT: THE QUESTION THEN BECOMES, IS THAT AS ONE WOULD UNDERSTAND IT IN THE ART LIMITING, LIMITED TO A TRANSCEIVER, OR IS THERE SOME OTHER PROCESS BY WHICH THINGS GO IN ONE WAY AND COME OUT ANOTHER THAT NEEDS TO BE ACKNOWLEDGED BEFORE YOU CALL IT A TRANSCEIVER?

IS IT SOMETHING ELSE? I DON'T KNOW ENOUGH ABOUT -- I DEFINE TRANSCEIVERS SIMPLY AS SOMETHING THAT BRINGS WHAT IT GOT IN AND SENDS WHAT IT'S GOT OUT. IT JUST DOES BOTH RECEIVING AND TRANSMITTING.

NOW, WHAT YOU'RE TELLING ME IS THAT IT CAN DO SOME CONVERSIONS OR CALCULATIONS OR SOME ACKNOWLEDGING IN A FASHION DIFFERENT, OVER A MEDIUM DIFFERENT THAN WHAT IT GOT. IT CAN COME IN ON A PHONE LINE AND GO OUT ON AN ANTENNA.

MR. BLOCK: OR THE OTHER WAY AROUND.

THE COURT: RIGHT. OR THE OTHER WAY AROUND.

MR. BLOCK: I'M NOT SAYING THAT THE TRANSCEIVER ITSELF IS DOING ANY OF THE CALCULATING

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YOU'RE TALKING ABOUT. THE RECEPTION AS A WHOLE IS DOING THE CALCULATING.

I'M JUST SAYING WHAT IS IT THAT CAUSES THE TRANSMISSION FROM THE RECEPTION SYSTEM TO BE TRANSMITTED TO THE TRANSMISSION SYSTEM. THIS ISN'T RESPONDING TO THE --

THE COURT: WELL, WE'RE DEALING WITH THE DEFINITION OF A TRANSCEIVER. THERE MAY BE OTHER THINGS IN THE CIRCUIT THAT COULD TAKE A CO-AX SIGNAL AND SEND IT OUT ON A PHONE LINE, BUT IS THAT A TRANSCEIVER?

MR. BLOCK: IF IT'S CAPABLE OF PERFORMING TRANSMITTING AND RECEIVING, THEN IT IS A TRANSCEIVER.

THE COURT: BUT ISN'T THERE ANOTHER FUNCTION? IF I WERE TO INVENT SOMETHING CALLED A TRANSCEIVER AND I WANTED TO DISCLOSE TO THE WORLD THAT IT NOT ONLY TOOK THINGS IN AND SENT THEM OUT, BUT IT ALSO COULD CONVERT FROM ONE KIND OF A SIGNAL AT A GIVEN ELECTRICAL HEIGHT TO ANOTHER SIGNAL, WOULDN'T I HAVE TO DESCRIBE THAT USING SOMETHING CALLED A TRANSCEIVER?

MR. BLOCK: I DON'T KNOW IF THAT WOULD BE REQUIRED, YOUR HONOR.

THE COURT: BUT YOUR -- YOU'RE

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ACKNOWLEDGING, BASED ON YOUR ARGUMENT, THAT THAT RED AND BLUE LINE THAT YOU DREW, INSTEAD OF BEING A TWO-WAY LINE OUT OF, OUT OF THE TOP BOX WHICH WAS ISDN COULD BE A RED LINE OUT OF ISDN AND A BLUE LINE BACK INTO PHONE FOR PURPOSES OF ACKNOWLEDGING AND TRANSMITTING AND RECEIVING?

MR. BLOCK: ACCORDING TO THE PATENT THAT'S THE CASE. THERE'S NOTHING IN THE PATENT THAT SAYS THAT THAT TRANSMISSION FROM THE TRANSMISSION SYSTEM OVER THE ISDN MUST ALWAYS OCCUR BACK TO THE TRANSMISSION SYSTEM OVER THE ISDN.

THE COURT: AND YOU NEED THE BLUE LINE IN THE CASE OF THE SATELLITE AND THE CABLE BECAUSE, BY DEFINITION, THEY CANNOT RECEIVE?

MR. BLOCK: THE SATELLITE TRANSMITTER ON THE TRANSMISSION SYSTEM CAN'T DO ANY OF THAT, THAT'S CORRECT. IT'S MERELY A TRANSMITTER.

THE COURT: WHY DO THOSE BLOCKS SAY TRANSCEIVER ON THE, ON THE TRANSMISSION SIDE?

MR. BLOCK: BECAUSE THE PATENTEE IN THIS EMBODIMENT WAS SAYING THAT IN THE CASE OF ISDN WE CAN USE TRANSCEIVERS.

THE COURT: BUT THEY NEVER DISCLOSE A TRANSCEIVER AS A FEATURE OF A TRANSMISSION SYSTEM, DO THEY?

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MR. BLOCK: THEY DISCLOSE TRANSMITTERS.

THE COURT: RIGHT. SO THOSE SHOULD BE REALLY TRANSMITTERS?

MR. BLOCK: THEY DON'T HAVE TO BE TRANSMITTERS. THEY CAN BE TRANSCEIVERS. TRANSCEIVERS OBVIOUSLY HAVE A TRANSCEIVING FUNCTION, SO IT'S A TRANSMITTER THAT DOES SOMETHING ELSE. IT CAN ALSO RECEIVE.

THE COURT: BUT THAT'S NEVER DISCLOSED AS PART OF THE INVENTION.

MR. BLOCK: IT'S DISCLOSED IN THE DRAWING, BUT IT'S NOT DESCRIBED IN THE SPECIFICATION IF THAT'S WHAT YOU'RE ASKING.

THE COURT: OKAY. BUT YOU'RE REJECTING -- LET'S SEE. IF I ADOPT THE DEFINITION THAT I'VE BEEN ASKED TO, WHICH IS OVER A, A SINGLE MEDIUM, THAT WOULD BE, THAT WOULD BE ONLY A PROBLEM WITH RESPECT TO THE CABLE AND SATELLITE?

MR. BLOCK: IT WOULD ELIMINATE EMBODIMENTS, EMBODIMENTS THAT ARE COVERED BY THE CLAIM.

THE COURT: WHY WOULDN'T THE USER INTERFACE DEVICE THERE THAT IS PART OF THE SYSTEM COVER THAT?

MR. BLOCK: BECAUSE THAT'S AN INTERFACE.

THE COURT: IT'S GOT A LINE GOING OUT.

MR. BLOCK: IT'S GOT A LINE GOING OUT.

THE COURT: WHAT IS THAT LINE DOING?

MR. BLOCK: I THINK THAT LINE SHOULD BE UP BY THE TRANSCEIVER.

AND WHEN WE READ THE REST OF WHAT DR. LIPPMAN SAID IN, IN PARAGRAPH 28, HE ANSWERS YOUR QUESTION BECAUSE HE'S LOOKED AT THAT SAME FIGURE 6 AND HE DOESN'T INTERPRET 27 INTERFACE TO BE WHAT IS DOING TRANSMITTING.

THE COURT: NOT TRANSMITTING. WHAT YOU'RE ASKING IT TO DO IS TO JUST TELL SOME TRANSMITTING SYSTEM THAT IT GOT WHAT IT SENT.

MR. BLOCK: THE TELEPHONE CALL IS ACTUALLY DONE BY THE TRANSMITTING SYSTEM BECAUSE IT'S THE LIBRARY SYSTEM CONTROL COMPUTER THAT INITIATES THE PHONE CALL.

THE COURT: NOT THE USER AT THE RECEIVING SIDE?

MR. BLOCK: NO, BECAUSE THIS IS -- THIS IS -- THIS IS -- THE TRANSMISSION SYSTEM NEEDS TO UPDATE ITSELF. IT NEEDS TO KNOW WHAT IS GOING ON SO IT MAKES THE PHONE CALL.

THE COURT: I SEE. SO IT'S LIKE A HANDSHAKE IN THE MIDDLE OF THE TRANSMISSION?

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